

Department of Public Health
and Human Services

Section:
RESOURCES

FAMILY RELATED MEDICAID

Subject:
Trust Funds

Supersedes: FMA 402-3 01/01/06

References: OBRA '93; ARM 37.82.101, .903 and .1110; 20 CFR 416 Subpart L; 42 CFR 435.601; Social Security Act §1917; Also, 42 U.S.C. 1396p(d) for trusts established after 8/11/93 or 42 U.S.C. 1396a(k) for trusts established prior to 8/11/93

GENERAL RULE--All trusts must be evaluated by Central Office Policy Specialists and/or Department legal staff as to their availability for the household's support and maintenance.

Do not separately evaluate trusts for SSI cash recipients for purposes of establishing Medicaid eligibility related to the receipt of SSI.

Once property has been placed into a trust, it is no longer personally owned. Therefore, personal resource exclusions (i.e., home and surrounding property, vehicle of highest equity value, income producing, necessary for self-support, etc.) listed in FMA 402-1 **cannot** be used to reduce the value of a trust.

DEFINITIONS

► **Beneficiary:** The beneficiary is the individual designated in the trust instrument as benefiting in some way from the trust. The beneficiary can be the grantor or another individual. The beneficiary is sometimes referred to the "beneficial owner" and has a "beneficial interest" in the trust.

Grantor: The grantor is the entity that creates the trust. The grantor may be any person, including a court or administrative body, with legal authority to act on behalf of the individual; or any person, including a court or administrative body, acting at the direction or request of the individual. Also known as the donor or trustor.

Trust: A trust is any arrangement in which a grantor transfers property (real or personal) with the intention that it be held, managed, or administered by a trustee(s) for the benefit of the grantor or other beneficiary(ies). Trusts are managed by individuals or entities with fiduciary obligations and may include (but are not limited to):

1. escrow accounts;
2. investment accounts:

3. future medical care accounts; and
4. other similar arrangements.

Trustee: A trustee is any individual(s) or entity (e.g., an insurance company or bank) that manages a trust and has fiduciary responsibilities. Sometimes referred to as the fiduciary or fiduciary owner.

Trusts may take any of several forms. For example, a trust created by a will is a “testamentary trust.” A trust created by one person for the benefit of another person or entity with the first person’s money is known as a “third party trust.” A “self-settled” trust is a trust created by a person with his/her own funds for his/her own primary benefit. A “living trust” is usually a revocable self-settled trust often created for tax and estate planning purposes.

SUPPORT AGREEMENTS

If any member of the filing unit has a written agreement which states that another person, entity or corporation agrees to support the household or a member of the household (e.g., family farm corporation, Masonic agreement or by-laws of a Hutterite Colony), the agreement must be evaluated to determine if it meets the legal definition of a trust.

If the agreement is determined to meet the trust definition, it must be evaluated for accessibility. If the trust is considered to be accessible, the value of all the resources held by the trust must be counted in determining the filing/assistance unit’s resource eligibility. It will be necessary to request verification of all resources held by the trust.

NOTE: All support agreements are to be evaluated by Central Office Policy Specialists and Department legal staff.

ACCESSIBILITY

FIAC Type code: ‘TI’ if inaccessible (excluded) for all programs or ‘TF’ if accessible (counted) for all programs.

If the trust is accessible, and verification is received that only a portion of the trust is available to the individual, only that portion will be considered in the resource determination. If such verification is not received, the full value of the trust will be considered available to each beneficiary.

A trust may be designated as revocable or irrevocable.

A revocable trust is a trust that can be modified or terminated by the grantor, or someone else, according to the terms of the trust.

An irrevocable trust is a trust that cannot be modified or terminated by the grantor or (in most cases) anyone else. A trust which is called irrevocable

but which terminates if the grantor (or someone else) takes some action is also considered a revocable trust. An irrevocable trust may be accessible and countable for Medicaid eligibility purposes.

For trusts created on or after 8/11/93, a revocable trust is considered an accessible resource. For example, if the trust document states the trust can only be modified or terminated by a court, it is considered to be available since the grantor/representative can petition the court to terminate the trust (regardless of whether or not the court chooses to modify or terminate the trust). See Medicaid Qualifying Trusts in this section for trusts established prior to 8/11/93.

► When the grantor, beneficiary, or trustee has access to a revocable or irrevocable trust created after 8/11/93, regardless of the stated use of the funds, the trust principal is treated as a countable resource. If the trust principal is available under any circumstances, it is a countable resource, if the trust was created after 8/11/93.

► **NOTE:** Nearly any trust created on or after 8/11/93 can be counted when determining Family-Related Medicaid eligibility, other than those special needs trusts and self-sufficiency trusts that comply with specific criteria in the federal law. No clause or requirement in a trust, no matter how specifically it applies to Medicaid or other federal or state programs, precludes a trust from being considered a resource.

EXAMPLES

Accessible Trust - The grandparents of a child receiving family-related Medicaid are the sole contributors to an investment fund for the child's benefit. The child's mother is the custodian of the fund (trustee). The grandparents state that the money is intended for the child's college education and not for basic necessities.

► **ACTION:** These funds are available as a resource to the child, and must be counted. Access to the funds is not restricted and the child is not obligated, in the legal sense, to use the funds for his/her college education. Further, the trust may be a countable resource to the grandparents if the trust is revocable. FIAC code 'TF' for the child, and possibly for the grandparents as well.

Inaccessible Trust - The grandparents of the child under 18 receiving Medicaid are sole contributors to an investment fund for the child's benefit. The trust agreement states the funds are to be used for the child's college education and cannot be accessed for college until the child reaches age 18. The child's grandparents are the custodians (trustees).

- **ACTION:** These funds are not currently available as a resource to the child and are not counted until the child achieves age 18. However, the trust may be countable as a resource to the grandparents. FIAC code 'TI' in the child's case until child achieves age 18; may be "TF" in grandparents' case.

TRUST INCOME

This section applies to trusts created on or after 8/11/93.

- Dividends, interest, rents and other income generated by a trust fund, unless otherwise excluded, that can be paid to or for the benefit of the beneficiary are countable income to the beneficiary in the month they become available; code 'OT', regardless of whether the income is actually paid out to the beneficiary.
- Income earned by a trust that can be, but is not distributed to the beneficiary, and is instead retained in the trust becomes a countable resource to the beneficiary in the months following the month the income was available for distribution. This provision applies even if the remainder of the principal of the trust is not a countable resource to the beneficiary. If part of the principal of a trust is a countable resource and part is not, the countable and excluded amounts will be separated coded as "TF" and "TI" on FIAC.
- Monies withdrawn from the principal of an inaccessible or excluded trust, unless otherwise excluded, are countable income in the month received; code 'OT', if counted for all programs. It may be necessary to use the 'OA', 'OM' and 'OF' codes if other programs are open.
- Monies withdrawn from the *principal* of an accessible or countable trust fund are excluded as income because an accessible trust fund is a countable resource. Money cannot be considered income and resource in the same month. Code 'OX', if excluded for all programs.
- Monies received and used for the care and maintenance of a third party beneficiary (adult or child) who is not a member of the trustee's filing unit are excluded as income for the trustee; code 'OX'. It is a best practice, although it is not a requirement, to list this income on TEAMS.

**MEDICAID
QUALIFYING
TRUSTS (MQT)**

A MQT may be a revocable or irrevocable trust or similar legal device which:

1. was established with the client's own resources;
2. was established by the client, client's spouse, client's parent or client's legal guardian;
3. names the client as beneficiary of all or part of the payments;

4. has disbursements made by one or more trustees who are permitted to exercise discretion with respect to the amount disbursed; **and**
5. was established prior to 8/11/1993.

Unless actually disbursed, count as a resource to the family-related Medicaid recipient the maximum amount which could be distributed if the trustee exercised full authority under the trust terms less any funds actually disbursed. Funds that are disbursed from the trust for any purpose are counted as unearned income to the client (see FMA 502-1).

Unlike trusts created on or after 8/11/93, the intended use (by the grantor) of the MQT trust must be considered when determining trust accessibility. Therefore, if a trust created prior to 8/11/93 states that the purpose of the trust is for education only, and the beneficiary is not pursuing education, the principal of the trust is not considered a countable resource for aged/blind/disabled Medicaid purposes because it is not intended to be accessed for anything except education.



Example: The principal of a trust created 4/22/1992 is \$250,000 and \$15,000 in interest has been accrued. Trust terms do not permit the principal to be distributed, but up to \$1,000 interest per month may be paid to the beneficiary. Because the trustee only disburses \$100 per month, the \$100 per month actually disbursed is counted as unearned income, and the remaining \$900 in undisbursed interest counts as a resource when determining Medicaid eligibility for the beneficiary. If the trustee continues to refuse full disbursement, this resource will compound itself monthly (i.e., \$900 the first month, \$1,800 the second month, \$2,700 the third month, etc.) if only \$100 disbursement is made to the client, and eventually cause the beneficiary to exceed the Medicaid resource limit.

SPECIAL NEEDS TRUST

A Special Needs Trust is a trust:

1. Established for the sole benefit of a disabled individual (as defined by the Social Security Act) who is under age 65 by:
 - a. the disabled individual;
 - b. a parent;
 - c. a grandparent;
 - d. a legal guardian; or
 - e. the court.

2. Established with assets of the disabled individual under age 65, **and**
3. Providing that upon the death of the disabled individual, the State Medicaid Program will receive all amounts remaining in the trust up to the total amount of medical assistance paid on behalf of the individual during his or her lifetime.

NOTE: This trust exclusion continues after the individual reaches age 65. However, the trust cannot be added to nor otherwise augmented after the beneficiary reaches age 65.

Funds contained in a Special Needs Trust are excluded as resources. Income of a Special Needs Trust is not counted as income to the disabled individual (beneficiary of the trust) unless actually distributed in the form of cash or vendor payments for food or shelter (see MA 500, "In-kind Income").

The Estate Recoveries Unit must be notified of the existence of Special Needs Trusts for Medicaid recipients, as well as when Medicaid recipients with Special Needs Trusts pass away. When a Medicaid recipient with a Special Needs Trust passes away, the closure notice should include a reminder to the family to contact the Estate Recoveries Unit to arrange for payment of the balance of the Special Needs Trust to the Department.

► POOLED TRUSTS

A pooled trust is a trust:

1. Established for the sole benefit of a disabled individual (as defined by the Social Security Act) by:
 - a. the disabled individual;
 - b. a parent;
 - c. a grandparent;
 - d. a legal guardian; or
 - e. the court.
2. Established with assets of the disabled individual,
3. Established and managed by a nonprofit association (e.g. PLUK--- "People, Let's Unite for Kids," in the case of Self-Sufficiency Trusts of Montana);
4. With a separate account maintained for each beneficiary of the trust, but for purposes of investment and management of funds, the trust pools these accounts; and

5. Providing that upon the death of the disabled individual, any amount remaining in the account that is not retained by the trust will be paid to the State Medicaid Program up to the total amount of medical assistance paid on behalf of the individual during his or her lifetime.

Funds contained in a pooled trust are excluded as resources.

- Income of a pooled trust is not counted as income to the disabled individual (beneficiary of the trust) unless actually distributed in the form of direct payment to the beneficiary or his/her agent or vendor payments for food or shelter (see MA 500, "In-kind Income).

BURIAL TRUSTS

A burial trust is a trust established by an individual for purposes of setting aside funds for payment of burial expenses for the individual or someone else (normally a spouse or a family member). Burial trusts under this provision are not the same as funds held in trust by a funeral home in conjunction with a prepaid funeral agreement/burial contract.

- Irrevocable burial trusts are excluded resources when determining Medicaid eligibility, regardless of the trust value; unless the individual also obtains an irrevocable funeral agreement.

Revocable burial trusts with a value exceeding \$1500 are countable resources when determining Medicaid eligibility, if created on or after 8/11/93. Revocable burial trusts created before 8/11/93 are evaluated according to MQT provisions.

The total value of a revocable burial trust and any other revocable burial account/contract cannot exceed \$1500 equity per person. If the combined values exceed \$1500, the burial trust and account/contract are countable in full. See FMA 402-1 for more information on burial accounts/contracts.

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